"It has been said that the document must not only in fact be in existence, but also that it must be described as existing.

"It would seem, however, that if the document is proved to be in existence at the time of the will and is sufficiently identified with the description in the will, it is not necessary that it should be actually described as in existence."

In re Truro, 1 P. and D. 201, holding that language in a will, sufficient if read in the light of the facts as they existed at the time of the execution of a codicil, would have been insufficient if read in the light of the facts existing at the execution of the will; and *In re Yockey*, 29 L. T. 699, where the court said that the language, unexplained by evidence as to the surrounding circumstances, left it perfectly uncertain whether the paper was regarded by the testator as in existence or not, but held it sufficient, strongly confirms this statement.

The more accurate statement of this requirement would seem to be that the language of reference must not point to a future instrument. *Harrison Hewitt.*

THE CONTROL OF THE COURTS OVER THE INTENT OF THE LEGISLATURE.

When the highest court in perhaps the leading American state boldly deserts a line of reasoning which heretofore it has announced to be the settled doctrine in a large number of carefully considered cases and by the same decision overrules the manifest intent of the legislative act passed in presumable reliance upon those decisions, in order to secure what it considers substantial justice, the decision is well worth careful study. This the Court of Appeals of New York has done in *Griffin v. Interurban Street Railway Co.*, 72 N. E. 513, a case relating to the imposition of cumulative penalties. In this case the charter of the company imposed as a condition where different street railways were consolidated, that free transfers should be given within certain defined limits in the city of New York. The Legislature imposed a penalty of $50 "for every refusal" of such transfer. The plaintiff, Griffin, having been refused transfers at four different times, brought suit for $200. The Court, by Bartlett, J., after referring to *People v. N. Y. C. R. R.*, 13 N. Y. 78; *Suydam v. Smith*, 52 N. Y. 383, and *Grover v. Morris*, 73 N. Y. 473, where under similar wordings cumulative penalties had been allowed, said:

It is quite obvious that the legislative intention to permit the recovery of cumulative penalties for refusals of the defendant to comply with provisions of the Railroad Law in regard to the transfer of passengers is as clearly manifested as in any of the cases cited. Notwithstanding this fact, a majority of my brethren are of the opinion that while the rule for the recovery of cumulative penalties, as already adverted to, is firmly established by the earlier decisions of the court, yet the changed

conditions in our modern life in great cities render its modification imperative. . . . The court is of the opinion that if cumulative remedies are to be permitted, the Legislature should state its intention in so many words; that a more definite form of statement should be substituted for the words hitherto deemed sufficient."

The court accordingly held that only one penalty could be recovered, and that by bringing action on one transfer, all similar causes of action previously acquired were waived. The reason given for the change of policy is that actions of this nature had become highly speculative in character, and that well-nigh appalling losses would be inflicted upon these and other defendants if the policy were to be continued.

The case presents itself from two points of view: that of the doctrine of *stare decisis*, and that of conflict between the legislative and judicial departments of government, and in either of these it is doubtful whether the Court of Appeals can find decisions in support of the position it has taken. The doctrine of *stare decisis* seems to be thoroughly incorporated into the fabric of American law, and only recently has its authority been seriously questioned. Some American courts, indeed, have carried the doctrine to extremes, as is illustrated in *Gray v. Gray*, 34 Ga. 499. There the Court says: "When a question has once been decided in this Court we desire it to be distinctly understood that such a decision is with us *authority*. We deem it of great importance that the decisions of this Court should, as a general rule, be uniform." And the Supreme Court of the United States has taken a position nearly as decisive, when a case has been uniformly decided in the same way a number of times. *Wright v. Sill*, 2 Black (U. S.) 544. See also *Davidson v. Biggs*, 61 Ia. 309.

Although legislative attempts to infringe upon the line which separates the legislative from the judicial functions of government have not been infrequent, the courts have almost uniformly manifested great care lest they should infringe upon the duties apportioned to the other departments. They have always adopted as a cardinal rule the principle that when the language of the statute is plain and unambiguous, the expressed intention of the legislature must prevail, and that the wisdom, expediency or good faith of that body are not matters for judicial inquiry. 1 *Kent Com.* 460, 468; *Opinion of the Justices*, 166 Mass. 589, 595; and the consequences are not to be considered where the language is plain and unambiguous. *State v. Franklin City S. B. & T. Co.*, 74 Vt. 246; *Louisville & Nashville R. R. v. Com.*, 104 Ky. 226.

These principles are too familiar, and the cases which support them too numerous, to need further illustration, but in view of the decision cited, they would seem to deserve new consideration, since it is not to be assumed that a court of the importance of the Court of Appeals of New York rendered its

decision without carefully considering them, even though the points are not discussed in the decision. It is difficult to see how the legislative intent could have been more clearly expressed. Without doubt the losses to be sustained by the Interurban Railway and similar corporations might be appalling if the recovery of cumulative penalties were allowed, but it is to be remembered that they were in this case probably incurred in willful and deliberate violation of the law, with a full knowledge of the possible consequences. Such violations have become too common of late, and too often escape a punishment sufficient to act as a deterrent from future disregard of public rights.

Sir Henry Maine, in his notable work upon Ancient Law, in commenting upon the fact that the jurisprudence of the Greeks left no impression upon the systems of later times, ascribes as a reason that, as in this case, the facts were allowed to influence and control the rigid rules of law. "No durable system of jurisprudence," he says, "could ever be produced in this way. A community which never hesitated to relax rules of the written law whenever they stood in the way of an ideally perfect decision on the facts of a particular case, would only, if it bequeathed any body of judicial principles to posterity, bequeath one consisting of the ideas of right and wrong which happened to be prevalent at the time. Such jurisprudence would contain no framework to which the more advanced conceptions of subsequent ages could be fitted." It is apparent that in the United States, owing to the vast number of state courts, every effort should be made to bring at least the adjective law into some semblance of uniformity, and that rules long established should not be varied without the most powerful reasons, since every deviation must cause a multitude of embarrassments to the courts themselves. It is hoped that the policy of the New York court, as evidenced in this decision, will not be followed.

THE APPOINTMENT OF RECEIVERS AT THE INSTANCE OF CREDITORS UPON THE MERE INSOLVENCY OF A CORPORATION.

In the case of *Harrigan v. Gilchrist*, 99 N. W. 909, the following general proposition was laid down:

"Courts of equity will not, without legislative policy favorable thereto, manifest in some way, render a corporation incapable of performing its corporate duties and practically terminate its existence by sequestering its property and taking charge of its affairs, though it is within judicial power to do so when necessary to the ends of justice."

The last clause suggests an inquiry into the conditions under which a court will take the property of a corporation within its power and appoint a receiver therefor.

The two theories as to the relation existing between an insolvent corporation and its creditors—one holding that it is a